DOCUMENT RESUME

ED 076 103 HE 003 998

AUTHOR Myers, John Holt
TITLE Tax Reform & University Development.
INSTITUTION National Association of State Universities and Land Grant Colleges, Washington, D.C.
PUB DATE [72]
NOTE 17p.

EDRS PRICE MF-$0.65 HC-$3.29
DESCRIPTORS *Educational Economics; *Educational Finance; *Expenditures; Financial Support; Grants; *Higher Education; Tax Allocation; *Tax Rates

ABSTRACT

This brochure discusses the implications of the Tax Reform Act of 1969 for university and college development officers charged with the responsibility for solicitation of gifts, bequests and grants from foundations. The solicitation of deferred gifts, bequests and grants from foundations is discussed in chapter one in relation to tax reform and private foundations, individual contributions, corporation deductions, the definition of public institutions, required pay out, limitations of expenditures, required reports, the overall effect of the Tax Reform Act, and the identification of private foundations which are likely to consider liquidations. Chapter two reviews bequests and deferred gifts, specifically, accrued tax benefits, bequest programs, private campaigns, deferred gifts, deduction exceptions, pooled incomed funds, charitable remainder trusts, and the regular unitrust. (MJM)

ED 076103

&

Published Under
The Auspices Of:

The Committee On Voluntary Support

CHANCELLOR E. LAURENCE CHALMERS,
University of Kansas,
Chairman

The National Association of State Universities and Land-Grant Colleges

HE 003 998

Tax Reform and University Development

At a recent annual meeting of the National Association of State Universities and Land-Grant Colleges, Mr. John Holt Myers, a Washington attorney recognized as an expert in tax matters, met with members of the Association's Committee on Voluntary Support to describe in fascinating detail implications of the Tax Reform Act of 1969 for university and college development officers charged with the responsibility for solicitation of gifts, bequests and grants from foundations.

At the end of his talk, the members of the Committee, chaired by Dr. E. Laurence Chalmers, Chancellor of the University of Kansas, urged him to set down his thoughts and suggestions on this vital issue.

The result is this small brochure, designed to offer development officers and others who work in the general area of voluntary support for higher education, useful guidelines and helpful counsel.

Office of Research and Information
The National Association of
State Universities and
Land-Grant Colleges

Chapter I

Solicitation of Deferred Gifts Bequests and Grants from Foundations

It would appear that public colleges and universities, even those major institutions which are members of the National Association of State Universities and Land-Grant Colleges, have not been receiving their fair share of the contributions of private foundations or adequate support in the form of bequests or deferred gifts.

For example, a 1962-63 year survey conducted by the American Council on Education of contributions to all colleges and universities—private and public, small and large—established that 22 percent of their donative support came from foundations (27 percent of the contributions for grant purposes and 18 percent of the contributions for capital purposes). At the same time, 15 percent of the total donative support in that year came from bequests (3 percent for current purposes and 25 percent of support for capital purposes). Although most of the support was in the form of outright gifts or bequests, nearly 3 percent of the total was in the form of deferred gifts, the nature of which, as will be indicated later, has been substantially changed by the Tax Reform Act of 1969.

Major private institutions, private men's colleges, private women's colleges and private coed colleges received nearly \$187 million (over 82 percent) of the \$227 million in gifts from foundations, whereas all state institutions received only \$35.6 million or approximately 16 percent. The same private institutions enumerated above received \$133 million (86.5 percent) out of \$155 million willed to colleges and universities. State and public institutions received \$15 million or only 10 percent.

There are two aspects of fund raising which deserve special consideration. First is the solicitation of gifts from foundations, particularly private foundations. The second is the solicitation of bequests and gifts in the nature of bequests (deferred gifts). Special attention has been devoted to the desire of the Association to assist its members in their fund raising activities.

The Tax Reform Act of 1969 has made substantial changes affecting the organization and operation of private foundations. In addition, although the Act made no basic changes in the tax incentives with respect to outright bequests to public charities, it did establish a burdensome and cumbersome statutory framework with respect to the making of deferred gifts in the form of remainder interests. On preliminary examination, it appears that these changes may offer opportunities to institutions which are members of the Association.

Tax Reform and Private Foundations

For the first time, the Tax Reform Act attempts to divide charities into two categories — private foundations and public charities. The Reform Act further discourages current giving to private foundations and, by way of incentives, encourages individual donations to public charities. At the same time, the Tax Reform Act requires that private foundations disburse more of their assets and, in many ways, penalizes those disbursements which are not made to public charities.

The significance of this for the Association and its member institutions is that the Association and its members are, under the new scheme, "public charities."

Contrariwise, such public charities are not affected by the rules which circumscribe private foundations and, on the other hand, as public charities, they are favored donees.

Individual Contributions

Without going into details of the Tax Reform Act, it is to be noted that individual contributors now receive substantially greater benefits for contributions to public charities than they do for contributions for private foundations. Individuals may deduct up to 50 percent of their adjusted gross income for contributions to public charities. Thirty of that 50 percent may be in the form of appreciated property which if sold would give rise to long-term capital gain. For such contributions, donors get a full fair market value deduction without taking the unrealized increment into account in any way. (Special rules apply with respect to tangible personal property and no donor, corporate or individual, is entitled to a deduction for the unrealized appreciation in property which if sold would give rise to ordinary income.) As in the past, an individual may carry over contributions to public charities which exceed the above limitations to the five years succeeding the year of gift.

By way of contrast, contributions by individuals to "private" foundations continue to be limited to 20 percent of the adjusted gross income and may not be utilized in determining the amount of carry-over available in the case of excess gifts to public charities.

It might be noted that the Tax Reform Act phases out the unlimited deduction available to a few individuals. Under an amendment to the unlimited deduction several years ago, this was really available only for contributions to public charities, and was utilized only by a very few individuals.

Corporation Deductions

(The statute did not change the basic rules with respect to gifts by corporations except denying them the deduction for any unrealized appreciation in property which if sold would give rise to short-term gain or ordinary income. Corporations are entitled to deduct 5 percent of their adjusted gross income for contributions for public or private charities and are entitled to utilize the excess, if any, in the five succeeding years.)

Perhaps the most important changes brought by the act are in the rules with respect to gifts of long-term appreciated property. Whereas previously a donor could fund his private foundation by such gifts and get a deduction at least to the extent of 20 percent of his adjusted gross income, he may no longer do so. However, such a donor can make a contribution of appreciated long-term property to a public charity and obtain all of the benefits which were previously available, including a deduction of up to 50 percent of the adjusted gross income with a carry forward of excess contribution to future years. Since the experience of the most sophisticated institutions indicates that a major portion of support is in many cases in the form of appreciated property, it seems likely that individual donors who have been contributing appreciated property to private foundations and then parceling out the funds through those foundations to public institutions will be strongly encouraged to make such gifts direct to public charities.

Definition of Public Institutions

Every charitable educational institution is a private foundation under the Tax Reform Act unless it can establish that it is excluded from such status under the definitions provided in the Code. These are extremely complicated. However, in the public category are the churches, colleges, hospitals, publicly supported and operated institutions and similar entities which were considered as public charities under the old Code for the purpose of the excess 10 percent deduction. In addition, the Act recognizes as public charities those which can establish

(1) that more than one-third of their support comes from "public" sources and no more than one-third from investment income or

(2) that they are so closely related to another public charity or charities as to enjoy "public" charity status because of that relationship.

"Public" charities are not affected in any substantial way by the Tax Reform Act insofar as their organization and operation is concerned. However, any entity which is a "private" foundation is circumscribed by many new restrictions and subject to many new requirements. These are clearly intended to force them to distribute more money for charitable purposes.

The scheme of required distribution is such as to definitely encourage distributions by private foundations to public charities. The restrictions of the statute are so burdensome, particularly on relatively small foundations, as to encourage their dissolution, which under the statute must be by way of distribution of assets to public charities.

Among the burdensome requirements imposed upon private foundations and their "managers" are a 4 percent tax on investment income, a limitation on the holdings of the foundation in businesses, a restriction against speculative investments and severe penalties for dealings between a private foundation and its managers, substantial contributors or members of their family or other "disqualified persons," such as certain defined public officials. More significant from the point of view of the public charity are the requirements now imposed upon private foundations with respect to current distributions, the penalties and burdens inflicted with respect to distributions to individuals or entities other than to public charities and the greatly increased reporting required of private foundations. It might be useful to discuss the most important of these in some detail.

Required Pay-Out

With respect to 1970 and 1971, private foundations were required by the statute to pay out all of their income for purposes consistent with their exemption (which includes taxes and administrative expenses). Such a requirement was only indirectly imposed prior to 1970. With respect to 1972, all private foundations will have to pay out all of their income or a fixed percentage of the fair market value of their assets determined annually, *whichever is the greater*. The tentative percentage for 1972 is 4½ percent; for 1973, 5 percent; for 1974, 5½ percent; and 1975 and later years, 6 percent. There may be a lag of one year in the meeting of these pay-out requirements in that a private foundation can credit payments made in the year following towards meeting the requirements of the previous year.

Many foundations have invested in assets which have produced a return of as little as 1 percent of their fair market value For this reason, it appears very likely that the required pay-out provision will result in a substantial increase in distributions by foundations, if not in 1972, then certainly in 1973, by the end of which the 4½ percent requirement with respect to 1972 will have to be met. The increase in the percentage through 1976 will result in additional distributions in later years. The significance of this fact is not fully appreciated. For the reasons set forth below, a greater percentage of the contributions are likely to be made directly to public charities and there is no reason why NASULGC universities and colleges should not participate in this increase.

Limitation of Expenditures

The Tax Reform Act strictly limits the purpose for which funds may be expended by a private foundation. This is done in the form of an initial tax on expenditures which violate the statutory rules and an additional confiscatory tax if the expenditure is not recovered. The private foundation may not attempt to lobby or attempt to influence legislation, with certain very limited exceptions. More important, grants to individuals for travel, study and other similar purposes may be made only if the foundation has an objective and non-discriminatory program which is approved in advance by the Internal Revenue Service. Of greatest significance insofar as the foundations are concerned is the requirement that in the case of grants to organizations, *other than public charities*, the private foundation must exercise "expenditure responsibility."

Even though the proposed regulations with respect to this provision are liberal, many foundation managers find this a frightening obligation. Because of the harsh penalties of the statute, it is to be expected that many private foundations, particularly those of relatively modest size, will eschew their own scholarship program and make grants direct to educational institutions. By the same token, many such foundations will want to avoid "expenditure responsibility," whatever the term means, by making their grants direct to public charities.

Reports

Although private foundations have for some years been subject to the requirement of filing an annual return which is supposed to be available to the public, there has been little information concerning their organization, activities and expenditures, except as might be voluntarily supplied to the Foundation Center which publishes periodically information concerning the 5,000 largest granting foundations.

The Tax Reform Act not only extends and increases the responsibilities of private foundations with respect to annual income tax return but also imposes upon a private foundation the requirement of preparing an annual report. This must include all the basic information concerning the managers, the assets and the grants and expenditures of the foundation. Not only must it be filed with the Internal Revenue Service but also it must be made available to any citizens for six months after the filing. Notice of that availability must be published in a newspaper with general circulation where the principal office of the foundation is located. The access to such reports should be of inestimable value to donee institutions.

Effect

The overall effect of the Tax Reform Act is to discourage the creation or continued support of private foundations. This does not mean that private foundations will not come into existence. Most major foundations in the past have been funded by way of bequest, and the Tax Reform Act in no way inhibits the estate tax deduction for such grants. However, the income tax incentives for making contributions to a private foundation are few indeed.

The fearsome penalties and burdens imposed by the Tax Reform Act have caused a number of small foundations to consider termination. Indeed, a number have already given up the ghost since they can no longer play any part in the donor's current contribution plan and because the expenses of management to meet the standards and requirements of the Tax Reform Act are so burdensome.

In this connection, it should be noted that a trust which is held for charitable purposes is a private foundation under the new Act. Moreover, a trust which has been held for the life benefit of one or more beneficiaries becomes a private foundation upon the death of the last tenant if the remainder is to be held thereafter in trust for the benefit of charity.

The Tax Reform Act provides few alternatives for the liquidation of a private foundation. The basic rule is that, if liquidation seems in the best interest of all concerned, then the foundation, with the approval of the Internal Revenue Service, must distribute its assets to one or more public charities which have been in existence for more than five years. If such private foundations can be identified and if they are sympathetic to the aims and purposes of the Association or as more likely the case, one of its members, there is no reason why NASULGC member institutions could not qualify as beneficiaries of that liquidation.

Identifying Prospects

It may be difficult to identify the private foundations which are likely to consider liquidation. However, more tools are available than in the past. The annual report, if the foundation is known, could be very helpful. Access to the annual report of an unknown foundation might be had through the notices which must be published in local papers or in bar periodicals. The trust departments of local banks and attorneys in the area are most likely to know of minor foundations which may be forced to liquidate because of the expenses and the burdens imposed by the Tax Reform Act. A likely source of information would be the accountants who quite often have provided services to such foundations with little or no compensation and who can no longer continue to do this because of the extensive reporting requirements imposed by the Tax Reform Act.

There is an alternative to the liquidation of a private foundation which is not too clearly spelled out in the law and with respect to which the regulations offer little guidance. This is for the private foundation to so associate itself with a public charity that (under very restrictive regulations) it will be recognized as partaking of the character of,that public charity. In essence, such a foundation would have to give up its independence and commit all of its funds to one or more of the public charities, which would practically speaking have to control the foundation. The advantages of such a rule to a donor are that the foundation retains its nominal independence and most important of all its identification. Moreover, if this route is followed, the donor can continue to fund the entity with contributions for which he gets the most favored income tax treatment. At the same time, it can be a vehicle for bequests.

Chapter II

Bequests and Deferred Gifts

As indicated above, many public charities benefit greatly from bequests, particularly as a source of support for their endowment programs. There is no reason to believe that NASULGC member institutions should not be recognized as favored beneficiaries and legatees under wills. In fact, experience strongly demonstrates that where an active program is pursued, substantial benefits from this source can be expected.

The obvious emphasis should be on current gifts of cash or property. However, there are many individuals who are not in a position to divest themselves of substantial assets or who feel that they need the protection of the availability of these assets until they or their loved ones die. Where an individual has been active in the support of an educational institution and either has a sufficient estate to consider bequests for charitable purposes or can assign to charitable purposes all or a portion of the residue of his estate after providing for his surviving family and others, then he or she might well be persuaded to consider a college or university as a legitimate beneficiary or legatee under his will.

In many instances, an individual in such a situation might be quite willing to set aside *now* all or a portion of his estate for the ultimate benefit of such an institution, providing that until his death and the death of certain loved ones, an amount should be annually distributed to him and his survivor or survivors.

Accrued Tax Benefits

There are several important tax benefits which accrue to a donor who takes such a step. In the first place, if it is properly done, he will receive a current *income* tax deduction for the commuted value of the remainder interest which he has irrevocably set aside for the benefit of a charity. There may be special advantages where the donor has greatly appreciated property. His transfer of such property to a proper statutory trust under the Internal Revenue Code should not give rise to a tax on the unrealized appreciation. Under certain circumstances, the payments which he receives will be taxable to him as income. Under others, a portion of his annual payment will be treated as ordinary income, a portion as long-term capital gain and a portion as return of principal. Depending on the form of the trust, most sales by the trustee of the assets transferred will not attract a tax since the gains realized are permanently set aside for the benefit of the charitable remainderman.

Basically, the Tax Reform Act did not affect the tax advantages of making a bequest or legacy to a public charity or private foundation. The estate of the donor receives a full deduction for the amount passing outright to the charity at the death of the decedent. On the other hand, the Reform Act substantially changes the rules with respect to gifts or bequests of remainder interests.

Bequest Program

The first priority of a development program oriented toward bequests is to establish and support an active program aimed at encouraging bequests. If the program is to be as successful as those at many colleges and universities, it may require the assignment of experienced fulltime personnel to develop and forward at the national level and to assist development at a local level. The program should encourage not only the making of substantial bequests but also the making of small bequests and the making of contingent bequests which may fall to an institution only if legatees or beneficiaries die before becoming entitled to their share or shares of the estate.

One of the inhibiting factors in a bequest program is the fact that it is very difficult to gauge its success or failure except after a considerable period of time. It may well take a number of years after the firm commitment of staff to the program before material results are noted in the way of bequests flowing in. The rewards of the effort are very substantial, however, and may be demonstrated at those institutions which have developed strong steady programs in this area over a period of years. One of the best examples in the college and university field is Stanford, which has had such a program in existence for more than 30 years and which is receiving annually very substantial support in the form of bequests.

Private Campaigns

In this connection, it is significant to note that the private colleges and universities which have placed the greatest emphasis on bequest programs and been engaged in actively soliciting bequests over the longest period of time, received over $133 million in the form of bequests during the 1962-63 fiscal year, which was more than 86 percent of the total bequest support of col-leges and universities during that year.

Perhaps the first step to be taken in the development of a bequest program is the production of appropriate literature. The initial brochure, which should be brought up to date from time to time, could emphasize the university as a logical object of bequests or legacies, and should provide illustrative will provisions and comments on the tax advantages involved.

The real heart of the program, though, would be the creation of an awareness on the part of all concerned that the university should be considered by every interested person in the making of his or her will. This could be done by the appointment of special bequest committees, and by cooperation with the local attorneys and trust officers. Identification of those who are likely prospects for major bequests is very important. Periodic reminders in the form of written communications to those identified as potential friends and benefactors would spell out the needs of the institution and the personal and tax advantages which a donor might be expected to receive from making a bequest.

Deferred Gifts

A deferred gift program should be developed concurrently with the will program since, inherently, they go together.

By "deferred gifts," we usually mean an irrevocable commitment of property now for the ultimate benefit of the university or college. The use of the property in the interim is retained for the benefit of the donor and, if appropriate, other beneficiaries. As suggested earlier, the Tax Reform Act narrowly circumscribes the form in which remainder gifts may be made. Nonetheless, the special advantage of getting a tax deduction now for the commuted value of a donated remainder is retained as well as the favored treatment where appreciated property is used to fund the gift. Deferred gifts can also be made by way of will. For example, a donor-testator may set property aside for the lifetime use of a wife or child, the remainder being committed to a charity. In such instances, an estate tax deduction normally is available for the value of the remainder interest provided the provision is properly drawn.

As we have indicated, insofar as the income tax aspects are concerned, the creator of a lifetime remainder gift has the added advantage of being able to fund the gift with appreciated property and, if proper rules are observed, not be taxable on the gain realized when and if the "trustee" converts the property into other assets. He will, however, be taxable on the income and/or the gain if and when he receives it in the form of annual payments.

Deduction Exceptions

Under the Tax Reform Act, no income, estate or gift tax deduction is available unless the deferred gift (gift of a remainder interest) is either (1) a remainder interest after a reserved life estate in a personal residence or farm, (2) a gift to a pooled income fund trust as narrowly defined in the statute, (3) a gift in the form of a "charitable remainder trust," either a "unitrust" or an "annuity trust," also strictly defined in the statute.

All of these forms of gifts present special problems from the point of view of the tax law. Despite a determined effort on the part of the Internal Revenue Service to provide guidelines in the form of regulations, there remains considerable doubt as to how each of these gifts may be made in such a fashion as to satisfy the requirement of the statute and the internal Revenue Service. At the request of the colleges and universities and others, the Internal Revenue Service and Treasury gave donors and donees until December 31 of 1972 to modify post-July 31, 1969, governing instruments to meet the requirements of the final regulations with respect to "pooled income fund trusts" which were promulgated in May, 1972.

At the same time, the Internal Revenue Service extended until July 1 of 1972 the time within which donors and donees of "charitable remainder trusts" can modify gifts made after the effective date of the statute (July 31, 1969) to meet the requirements of what are still proposed regulations with respect to that kind of a gift. The colleges and universities have requested that the Internal Revenue Service issue approved forms or guidelines with respect to both kinds of gifts.

If a proper bequest program is developed, member institutions of the National Association of State Universities and Land-Grant Colleges may well want to take advantage of gifts to pooled income funds and in the form of charitable remainder trusts. This, in our opinion, suggests that NASULGC universities and colleges should prepare for themselves forms which meet the requirements of the Internal Revenue Code. In this connection, it may be advisable to obtain Internal Revenue Service approval of such forms since they will be given such wide circulation if the program is actually adopted.

Pooled Income Fund

A pooled income fund trust may be taken advantage of only by certain public charities. The investment pool (which may be part of the institution's endowment if separate records are adequately kept) is made up of similar gifts by similar minded donors, each of whom agrees to retain for himself or for other designated people in being at the time he creates the gift the income for himself and/or the others which is measured by the average rate of return earned by pooled investments each year. His deduction is based upon the highest rate of return of the pool earned over the previous three years or an assumed return of 6 percent if the pool has not been in existence for three years.

There are restrictions on the investment and management of the pool, such as for example, it cannot be invested in tax exempt securities. The donor is fully taxable on the annual payments which he receives. However, the pool is not taxable on any long-term capital gains. The donor is not considered to have realized gain if he transfers appreciated property to the pool even though the pool may subsequently sell that property, provided the sale takes place after the period provided for long-term capital transactions.

The principal advantage of a pooled income is as a vehicle for investment of small remainder gifts where separate investment would not be feasible because of the costs involved. This is not to say that under certain circumstances major donations might be made to a pooled income fund. It has been the experience of colleges and universities that some donors find this form of gift particularly attractive as distinguished from the only alternative; namely, the "charitable remainder trust."

Charitable Remainder Trusts

The charitable remainder trust is a creature of Congress which results from a somewhat abortive attempt to curb alleged abuses in the gift of remainder interests. (The pooled income fund trust has a similar purpose.) Like the pooled income fund trust, the charitable remainder trust is circumscribed by statutory provisions. Unlike the pooled fund, it can be created for the benefit of public *and* private charities although it is likely to be used most often for the former. The charitable remainder trust is a special trust under the tax laws and is under most circumstances not subject to tax although the beneficiary is fully taxable on the income in the form of annual payments. Under ordinary circumstances, the creator of a charitable remainder trust may fund it with appreciated property without being taxed on the gain. However, under the unusual manner in which payments to beneficiaries are taxed, that gain may be subject to tax when and as distributed.

There are two forms of charitable remainder trusts, "annuity" trusts and "unitrusts."

Annuity Trust—Under the annuity trust, the beneficiary or beneficiaries who, as in the case of pooled income fund and the unitrust, must be in being at the time of the creation of the trust, receive for their life or lives (or for a term of not more than twenty years) a fixed annual amount This must be at least 5 percent of the value of the assets initially transferred to the trust. This, in fact, is *not* an annuity, since payment is limited to the assets of the trust itself. In other words, if the assets are depleted or lost for one reason or another, the beneficiary entitled to payments will have no claim against the donee institution. By the same token, the donee institution is not a guarantor of the payment as in the case of a "charitable gift annuity" where the institution receives cash or property making an *unconditional* promise to pay a certain amount over a period of time.

(This last kind of gift is not affected by the Tax Reform Act except that if it is funded with appreciated property then the "bargain sale" rules apply which means that the donor will realize gain from the transaction to the extent that the value of the annuity exceeds the allocated basis. Under the proposed regulations this gain may be paid by the annuitant as he receives his annual annuity.)

As indicated, a donor to a charitable remainder "annuity trust" has the distinct advantage of not being subject to a capital gains tax under normal circumstances except as the gain or a portion is actually distributed to him.

Unitrust—The alternative kind of charitable remainder trust, the "unitrust," was also designed to prevent a donor from taking unreasonably excessive deduction. It stems from a suggestion of a New York trust investment officer who experienced much difficulty (as do many trust officers) in placating both the life tenant and the remainderman. The life tenant always insists upon a maximum return and the remainderman always requires maximum growth. His proposal was that instead of paying the income, a trust would pay a fixed percentage of the fair market value of the assets computed annually. Thus, the trust can be invested for a maximum return whether it is received in the form of income or increment and both the life tenant and the remainderman are protected, the life tenant getting benefit of any increment through the percentage of the increase which is assigned to his lifetime interest.

Under the charitable remainder "unitrust," the beneficiary or beneficiaries must receive annually a fixed percentage of the fair market value of the assets, which percentage must not be less than 5 (subject to the qualifications noted below). The reason for this percentage limitation is obscure. The statute does permit the donor to agree to receive the income only if it is less than the percentage although his deduction is computed as if he receives the full percentage. In such case, he may also agree with the donee that in years where the income exceeds the percentage the deficits between income and percentage in past years may be made up.

Best Advantage

Although many donors may be persuaded to adopt an "income only" trust, the regular unitrust provides the maximum advantage to a donor. By retaining a percentage of the fair market value of the assets annually, he is in a way protected against inflation. As indicated above, if he transfers appreciated property, under normal circumstances, the appreciation will not be taxed to him except when as and if he ever receives it through the annual payments. Under the special rules, this would occur only if the income of the trust is less than the annual payment required and property has been sold at a gain. The deduction for the charitable remainder trust gift is based upon the percentage chosen. Both the unitrust and annuity trust present special record keeping requirements insofar as the donor institution is concerned. As with the pooled income fund, special trust returns are required.

It should be noted that the pooled income fund and the charitable remainder trust are to a certain extent covered by the "private foundation" rules of the Tax Reform Act. This is a technicality but introduces some complexities in the creation of such entities.

Conclusion

As indicated, the Tax Reform Act presents special opportunities to a public charity insofar as solicitation of gifts from private foundations is concerned. Because of the requirements of the Tax Reform Act, the private foundations will be distributing more funds and those distributions are much more likely to be directed toward public charities. Moreover, the reporting requirements imposed upon private foundations are such that public charities will have much more information concerning the assets, activities and management of private foundations.

The Tax Reform Act did not in any way diminish the tax advantages of making a bequest to a public or, in fact, to a private charity. Universities and colleges should be natural beneficiaries.

A will or bequest program should be associated with a deferred gifts program which, although of lesser priority, is of real importance. Potential beneficiaries should take the responsibility for preparing governing instruments by which such gifts may be made. The charitable remainder trust—unitrust and annuity trust—has special advantages, particularly in the case of larger gifts which can be separately invested.

The annuity trust is a suitable vehicle where a certainty as to dollar amount is desired. The unitrust is a very satisfactory vehicle where the donor wants protection against inflation and against investments which do not maximize investment return.

Insofar as the pooled income fund is concerned, we would interject one note of caution. There are those who contend that the creation of a pooled fund (which has been done by many colleges and universities and other public institutions well aware of this difficulty) constitutes the issuance of a "security" which may subject the issuer to the regulatory provisions of the Securities and Exchange Commission even though the statute exempts "issuers" which are organized and operated exclusively for charitable and educational purposes. Before creating the pooled income fund, an institution would want to satisfy itself as to the dimensions of this problem.